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UNCLAS SECTION 01 OF 04 BANGKOK 000788

SIPDIS

SENSITIVE

STATE FOR EAP/MLS AND EB
TREASURY FOR OASIA
COMMERCE FOR 4430/EAP/MAC/OKSA
STATE PASS TO USTR FOR WEISEL

E.O. 12958: N/A
TAGS: ECON EFIN PREL TH
SUBJECT: THE GREAT THAKSIN ASSET SALE: TAX-FREE BUT WITH COSTS

¶1. This cable is sensitive but unclassified. Not for internet distribution.

¶2. (SBU) Summary. The sale of the Prime Minister's publicly-listed family holding company, Shin Corp, to Singapore's Temasek, has provoked widespread criticism for the byzantine nature of the transaction, the fact that it was structured to be entirely tax-free, the appearance that government polices were promulgated to support the deal, and the sale of "national assets" to foreigners. While the legality of the transaction is still open to debate, a sale providing nothing to the government coffers while earning the Thaksin family US$1.8 billion is widely seen as unethical. The deal has catalyzed Thaksin opponents and created perhaps the most serious challenge to the stability of the Thaksin administration since it took office in 2001. Attacks on Singapore's motives and implication that the Singapore government somehow abetted Thaksin's corrupt practices in the Shin sale are causing a Thai nationalist reaction, with even respected academics demanding Singapore call off the deal. The fact that the PM's 2001 platform called for Thai nationalist economic polices coupled with the amount of political capital that the Shin Corp transaction has cost, further complicates Thaksin's efforts to push forward his outward-looking, albeit politically difficult economic policies, including privatization of SOEs, massive infrastructure development, and an FTA with the US. End Summary.

The Deal

¶3. (U) On January 23, 2006 the Shin Corp CEO announced that the company's controlling shareholders, the PM's Shinawatra family, would sell their 49.6 percent ownership of the company's outstanding shares to Temasek Holdings, the investment vehicle of the government of Singapore. Shin Corporation is publicly listed on the Stock Exchange of Thailand (SET) and it functions as a holding company for shares in mobile telephone company Advanced Info Service (AIS - 43 percent), Shin Satellite (41 percent), television station iTV (53 percent), and communications and tech company CSLoxinfo (40 percent). The total value of the sale was 73.3 billion baht (US$1.8 billion). In addition, Singtel, the Singapore telephone company majority owned by Temasek, owns 20 percent of AIS.

¶4. (SBU) The Temasek transaction was designed in a way to avoid taxes and get around Thai law limiting foreign equity in telecom firms to 49 percent. The law raising the limit on foreign equity participation was raised to 49 percent from 25 percent the day before the Temasek deal was announced. Three companies were created in Thailand one week before the transaction was announced to hold varying amounts of Shin Corp shares. Each nominee company has Temasek as a major shareholder but two also include Siam Commercial Bank and a local businessman (who received a 20 billion baht loan from Siam Commercial Bank to fund his contribution to the capital of the nominee firm). One of the nominee companies owns 41 percent of another. Through these Thai nominee companies holding Shin Corp shares, the legal fiction can be maintained that Shin Corp remains a majority-Thai owned firm.(This practice of using nominees is quite common in Thailand as a means to get around a variety of restrictions to foreign ownership on Thai as
sets.)

¶5. (U) The members of the PM's family and their associates sold their shares (transferred to them by the PM in 2000, just prior to running for PM in 2001 as part of an effort to comply with Thai conflict of interest requirements for senior officials) to Temasek through the SET. Thai law exempts capital gains taxes from trades made by individuals transacted through the SET. However, it became clear that Thaksin's son and daughter sold more shares than they had previously reported as owning. This was due to a transaction on January 20 in which they bought shares equivalent to 10.4 percent of Shin Corps total outstanding from a British Virgin

Islands company called Ample Rich Investment Ltd. Although the price of Shin Corp shares was 49.25baht/share on January 20, the transaction between Ample Rich and the Thaksin children was done at 1baht/share.

Ample Rich

¶6. (U) As explained at a February 1 press conference held by Suvarn Valaisathien Thaksin's tax attorney, the timeline of the Ample Rich transaction was as follows:
-June 11, 1999. Ample Rich Ltd. established in the British Virgin Islands to hold Shin Corp stock in preparation for listing Shin Corp. American Depository receipts on NASDAQ. The US listing was never done because of the "poor performance of the NASDAQ in 2000" (Note: through August 31, 2000 the NASDAQ Composite Index was up slightly for the year.) Ample Rich transferred the Shin Corp shares from Thaksin at par i.e. 1baht/share.
-December 1, 2000. PM transfers his shares in Ample Rich to his son Panthongtae, to comply with Thai constitution prohibiting a minister from holding more than 5 percent of the shares of a company.
- May, 2005. Panthongtae transfers 20 percent of Ample Rich shares to his sister, Pinthongta.
- January 20, 2006. Panthongtae and Pinthongta purchase all the Shin Corp shares held by Ample Rich at the same price as Ample Rich's original purchase price i.e.1baht/share. Suvarn explained that the shares were brought back to Thailand in order for the country to benefit from the capital inflow achieved through the sale of shares to Temasek. It should be noted that if the shares were sold offshore, a 15 percent withholding tax would have applied to the transaction. We also understand that Temasek did not want questions to arise from buying such a large part of the shares from a shell company located in a tax haven.
- January 23, 2006. The siblings sell all their Shin Corp shares, about 27 percent of all outstanding Shin Corp shares, to Temasek via the SET.

Favorable Rulings

¶7. (U) Prior to Temasek purchasing the shares, the Securities and Exchange Commission (SEC) and the Revenue Department made several rulings highly favorable to the Shinawatra family and Temasek. Thai securities law requires that an entity acquiring 25% of the equity of a listed firm must offer to buy the remaining outstanding shares of existing shareholders at a price "not less than the price the tender-maker offered to any shareholder during the previous 90 days." Yet the SEC ruled that Temasek could tender for remaining AIS shares at a price 23 percent below market based on an opinion from a financial advisor (the advisor was SCB Securities, a subsidiary of the Bank which owns shares in the nominee companies that formally acquired Shin). Also, the SEC ruled that "because Shin Sat and iTV comprised less than 10 percent of Shin Corp's total revenue," Temasek did not have to tender for those shares despite the regulations regarding change of control. These rulings substantially reduced Temasek's required cash outlay for controlling interest in the Shin subsidiaries.

¶8. (U) When Thaksin transferred Shin Corp shares to family members in 2000, the Revenue Department ruled that, because the shares were transferred below market price, they would not be liable to personal income tax. When the family sold their Shin shares to Temasek, the Revenue Department ruled that, since the shares were sold by individuals on the SET, no capital gains liability occurred. The Revenue Department has ruled that no tax event has occurred on any of the asset transfers and sales from the time Thaksin began distributing Shin Corp shares in 1999 through the sale to Temasek. Critics have been unable to find evidence of tax evasion (as opposed to tax avoidance) from these maneuvers but argue that because at least some of the transfers were not reported to the SEC as required for all off-SET trades, the Shinawatra children could be subject to fines and up to one year in jail.

Questions and Accusations

¶9. (U) In addition to these facts, Thaksin opponents have made additional accusations:
-Thaksin did not sell his shares in 2000 because he wanted to use his position as PM to favor his companies and make them more valuable. As demonstrated by the fact that the value of Shin and affiliated company shares have appreciated more rapidly than the overall Thai stock market over the past five years, these critics argue the PM succeeded in his goal and sold out at the high. Policy decisions limiting competition in the mobile phone and satellite markets and preferential concession agreements are, critics contend, just some examples of the special treatment these Thaksin-owned entities received from the RTG to help build the value of their enterprises.

- The Thai constitution specifically prohibits ministers from having an interest in or acting on behalf of a company, yet the PM was "on vacation' in Singapore for four days during the end of December, a remarkable coincidence.

- There are reports that a second company called Ample Rich, incorporated in the UK, engaged in trades of Shin Corp shares held offshore through Singapore brokerage firm Vickers, Ballas & Co. This accusation is based on a July 21, 2000 Shin Corp major shareholders report to the SEC indicating that Ample Rich (BVI) owned 10 million fewer Shin shares than it had when Thaksin first transferred shares offshore in 1999. These 10 million shares reportedly showed up on the books of Vickers although no trade was ever reported. When the siblings bought all Ample Rich's Shin Corp shares in 2006, the missing 10 million shares were there.

- Temasek paid a premium of about 20 percent for Shin shares over market value of the underlying assets. Critics contend that "there must be a quid pro quo" with one senior Democrat Party MP asking "did they promise Singapore basing rights for their F-16s?" An academic accused Singapore of "enabling Thaksin's cash out" and questioning "the moral and ethical standards of the buyer."

-Even if the transaction can be legally justified, critics contend there is no doubt but that making a profit of over US$1 billion and not paying any taxes at a time when the government budget is under pressure and the Revenue Department has become more active in collecting taxes sets the wrong example and violates Buddhist precepts for proper behavior of a leader.

- Thaksin has been trying for several years to privatize EGAT, the state-owned electric utility, in the face of opposition from unions and those who fear privatization would lead to higher energy prices for consumers. Three days ago the EGAT chairman, responsible for preparing the company for privatization, resigned in the wake of the Shin Corp sale stating that he did not want to preside over the sale of his company "to foreigners."

¶10. (SBU) Comment: The Constitutional Court and the National Counter Corruption Commission investigated Thaksin in 2001 for failing to dispose of all his substantial corporate assets. By the narrowest of margins, both institutions acquitted the PM of wrongdoing and accepted his argument that his failure to disclose certain assets was simply an error. Now Thai regulators stand accused of again making special rulings to favor the PM. As one stock market observer noted "it's not exactly news that Thai institutions are weak" but the blatant manipulation of legal loopholes and influence has now resulted in enormous liquidity in the hands of the PM and made him appear "greedy."

¶11. (SBU) In his favor, the path of Thaksin's transaction is well trodden here in Thailand, from the use of offshore companies, to nominees, to effective use of tax avoidance techniques. But the arrogance and scale with which this was done has rubbed many Thais the wrong way, thereby weakening the PM politically, at least in Bangkok. Thais are also concerned that "national assets, some of which may have a national security component" (e.g. satellites), were sold to an entity controlled by a foreign government. Thaksin opponents are trying to play up the nationalist/xenophobia card with a February 7 newspaper headline reading "Singapore Warned: Drop Shin Takeover."

¶12. (SBU) Thaksin was elected in 2001 partially on a platform of taking Thailand back from the IMF and the other foreigners. With the need to expend so much political capital justifying his self-enrichment, Thaksin may need to reduce his exposure to any further charges that he is "selling out the country to the foreigners." His policies involving "megaprojects" infrastructure development, privatization of state-owned enterprises and an FTA with the US could face review if and when the PM needs to re-establish his nationalist and populist credentials.

BOYCE